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EDWARD M. WOODWARD, SR.
(1921-2000)

August 11, 2005

The Honorable Charles L. A. Terreni
Executive Director
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration with Horry
Telephone Company, under the Telecommunications Act of 1996
Case No. 2005-188-C
Our File No. 05-7024

Dear Mr. Terreni:

Enclosed for filing are an original and twenty-six copies of Direct Testimony of Greg Darnell. Would you please file the original, returning a clocked copy to me in the envelope provided.

By copy of this letter I am all parties of record, by mail and electronically. Thank you for your assistance.

Very truly yours,

WOODWARD, COTHRAN & HERNDON



Darra W. Cothran
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DWC/bjd

Enclosures.

cc: F. David Butler, Esquire
Margaret M. Fox, Esquire
John M. Bowen, Jr., Esquire
Florence P. Belser, Esquire
Shannon Bowyer Hudson, Esquire
Frank R. Ellerbe, III, Esquire

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission)
Services, LLC for Arbitration of Certain Terms) Case No. 2005-188-C
and Conditions of Proposed Agreement with)
Horry Telephone Company, Concerning)
Interconnection and Resale under the)
Telecommunications Act of 1996)

TESTIMONY OF GREG DARNELL

on behalf of

MCImetro Access Transmission Services, LLC

August 11, 2005

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SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Greg Darnell, and my business address is 6 Concourse Parkway,
3 Atlanta, Georgia, 30328.

4
5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by MCI, Inc. as Executive Staff Member – Regulatory Economics.

7
8 **Q. HAVE YOU PREVIOUSLY TESTIFIED?**

9 A. Yes. I have testified in proceedings before regulatory commissions in Alabama,
10 California, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Jersey, North
11 Carolina, Pennsylvania and Tennessee, as well as before the South Carolina Public
12 Service Commission (“Commission”), and on numerous occasions have filed
13 comments with the Federal Communications Commission (“FCC”).

14
15 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL**
16 **BACKGROUND?**

17 A. I have more than 22 years experience in telecommunications, with about half of
18 that time in the area of public policy. For the past 10 years, my job
19 responsibilities at MCI have focused on issues relating to opening local
20 telecommunications markets to competition. I have testified on a wide range of
21 issues related to interconnection agreements between MCI and incumbent local
22 exchange carriers and in numerous Unbundled Network Element (“UNE”) rate
23 making proceedings. My responsibilities require that I work closely with many

1 different organizations in the company, including the personnel responsible for
2 the design and operation of the company's network, as well as those who sell
3 services to customers across all market segments. I have a B.A.B.S.S. in
4 Economics from the University of Maryland and received a M.S. in
5 Telecommunication Management from the University of Maryland University
6 College in December 2004. My qualifications are detailed in Attachment GJD-1
7 to this testimony.

8
9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. MCImetro Access Transmission Services, LLC ("MCI") has filed a petition for
11 arbitration to resolve issues following negotiations with Horry Telephone Company
12 (referred to as the "Horry").

13
14 To help the Commission understand the unresolved issues, I have organized my
15 discussion into the following categories:

16 a) Issues regarding the extent to which the purpose or scope of the agreement
17 should be limited. Issues #2, #4(a), #7, #9.

18 b) Issues regarding information regarding identification of the calling party. Issues
19 #1, #6 and #8.

20 c) Issues regarding compensation for "virtual NXX" codes for ISP-bound traffic,
21 and for "out-of-balance" traffic. Issues #3, #104b), #5 #10.

1 As was done in the petition filed by MCI in this proceeding, in this testimony
2 language proposed by MCI will be bold, underscored and italicized and language
3 proposed by Horry will be in bold type.

4
5
6
7 **1. HORRY'S PROPOSED RESTRICTIONS ON MCI LOCAL SERVICES**

8
9 **ISSUE #2**

10
11 **Issue:** Should End User Customer be defined as only customers
12 directly served by the Parties to the contract? (GT&C,
13 Glossary, section 2.17)

14
15 **MCI position:** No. End User Customers may be directly or
16 indirectly served. The Act expressly permits either
17 direct or indirect service. (See Issue No. 4 (a)).

18
19 **ILEC position:** MCI must be providing service directly to End Users
20 physically located in the LATA. No law says Horry cannot
21 limit interconnection agreements to non-wholesale
22 arrangements. (See Issue No. 4 (b)).

23
24 **Disputed Language:** A retail business or residential end-user subscriber
25 to Telephone Exchange Service provided directly **or**
26 **indirectly** by either of the Parties.
27

28 **ISSUE #4 (a)**

29
30 **Issue:** Should MCI have to provide service (a) only directly to
31 end users? (Interconnection, section 1.1)

32
33 **MCI position:** (a) No. End User Customers may also be indirectly served
34 by the Parties through resale arrangements. The Act
35 requires both Parties to the contract to allow resale. The
36 same "directly or indirectly" language is used in section
37 2.22 of Horry's model contract for defining interexchange
38 customers. Thus Horry does not attempt to limit the resale
39 ability of interexchange carriers, and there is no reason why
40 it should try to do so regarding local exchange.
41

ILEC position: MCI must be providing service directly to End Users physically located in the LATA. No law says Horry cannot limit interconnection agreements to non-wholesale arrangements. Also, the Commission's rulings on "virtual NXX traffic" apply to ISP-bound traffic too. The FCC's ISP Remand Order never discussed ISP FX arrangement specifically so Horry does not believe the FCC's compensation regime for ISP-bound traffic applies.

Disputed Language: This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA.** This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

ISSUE #7

Issue: Does the contract need the limit of “directly provided” when other provisions discuss transit traffic, and the issue of providing service directly to end users also is debated elsewhere? (Interconnection, section 3.1)

MCI position: No. This language is unnecessary and confusing in light of other provisions of the contract.

ILEC position: Yes. Horry wants to make clear that this contract is only for traffic directly exchanged between the parties' directly served End Users.

Disputed Language: Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, **and shall only carry IntraLATA traffic originated or terminated directly between each Parties End User Customers.** The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275

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ISSUE #9

Issue: Should the Parties be providing service directly to End Users to port numbers? (Number portability, section 1.1)

MCI position: No. This is not required for any industry definition of LNP. MCI is certified to do LNP for the End Users that indirectly or directly are on its network. Concerns that some resellers may not be telecommunications carriers or must provide the same type telecommunications services provided prior to the port is an illegal limit on what entities MCI can provide wholesale telecommunications services. The FCC has even allowed IP-Enabled (VoIP) service providers to obtain numbers directly without state certification. See the FCC's CC Docket 99-200 order (Adopted: January 28, 2005 Released: February 1, 2005) granting SBC Internet Services, Inc. (SBCIS) a waiver of section 52.15(g)(2)(i) of the Commission's rules. And MCI knows of no law requiring that the same type of Telecommunications Service provided prior to the port has to be provided. That is antithetical to the goals of competition.

ILEC position: Horry believes that LNP can only be done for telecommunications providers directly serving end users. Horry added to first version prohibiting LNP for customers of MCI's wholesale telecommunications services a provision allowing resale buy only by telecommunications provides and only when same type of telecommunications services as provided before the port is involved.

Disputed Language: The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. **Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider to the End User Customer porting the telephone number.** The dial tone must be derived from a

1 switching facility that denotes the switch is ready to receive
2 dialed digits. **In order for a port request to be valid, the**
3 **End User Customer must retain their original number**
4 **and be served directly by the same type of**
5 **Telecommunications Service subscribed to prior to the**
6 **port.**
7

8 **Q. WHAT IS THE SUBJECT THAT IS COMMON TO ISSUES #2, #4(A), #7**
9 **AND #9?**

10 A. Horry wants to restrict the traffic that MCI is permitted to send over
11 interconnection trunks to that generated by end user customers directly connected
12 to MCI. Horry wants to define the term "End user customer" as "(a) retail
13 business or residential end-user subscriber to Telephone Exchange Service
14 provided *directly* by either of the Parties." (Emphasis added.) Further, Horry
15 seeks to define the term "directly" to mean that MCI must own all network
16 facilities between its Point of Interface ("POI") with Horry and the originating or
17 terminating location of all traffic. Through these restrictions, Horry seeks to
18 prohibit MCI from having Time Warner Cable ("TWCIS" or "Time Warner
19 Cable") as a customer of its telecommunications services.
20

21 **Q. SHOULD HORRY BE PERMITTED TO RESTRICT WHO MCI CAN**
22 **HAVE AS A CUSTOMER?**

23 A. No, and Horry has not even attempted to articulate any justification for its
24 proposed restriction. MCI's choice of customers should not be restricted. MCI
25 should be permitted to provide services to end users both directly over its own
26 facilities and indirectly over the facilities of other certified carriers. Section

1 251(a)(1) of the Act contains no limitation on MCI's ability to use interconnection
2 to provide services to another carrier, which then serves its end users. Section
3 153 (47) defines "telephone exchange service" broadly, and contains no
4 limitations as to how such service may be provided. Also, each local exchange
5 carrier has the duty not to prohibit the resale of its services, 47 U.S.C. section
6 251(b)(1), and thus interconnected parties may serve end user customers through
7 resale arrangements.

8
9 In fact, rural ILECs ("RLECs") in Ohio unsuccessfully tried to argue that MCI (in
10 a similar arrangement with Time Warner Cable) did not meet the requirements of
11 section 153 of the Act because MCI was not offering service "directly" to the
12 public. The Ohio Commission rejected these RLECs' arguments stating as
13 follows:

14 The Commission denies rehearing on Applicants' fifth assignment
15 of error. The Commission agrees with Applicants that 47 U.S.C.
16 [paragraph] 153(a) (1) and (c) (2) require Applicants to
17 interconnect with other 'telecommunications carriers' and that 47
18 U.S.C [para] 153 defines a 'telecommunications carrier' as 'any
19 provider of telecommunications services.' The Commission also
20 observes, as do Applicants, that the 47 U.S.C. [para] 153 definition
21 of 'telecommunications service,' is 'the offering of
22 telecommunications for a fee directly to the public, or to classes of
23 users as to be effectively available to the public, regardless of
24 facilities used.' Applying this definition to MCI and its BFR, the
25 Commission notes that MCI will doubtless collect a fee for
26 providing telecommunications via interconnection with Applicants.
27 Further, MCI's arrangement with Time Warner will make the
28 interconnection and services that MCI negotiates with Applicants

1 `effectively available to the public, regardless of the facilities
2 used.’¹
3

4 **Q. IN ANOTHER CONTEXT, HAS HORRY PREVIOUSLY AGREED TO**
5 **THE LANGUAGE PROPOSED BY MCI?**

6 A. Yes. Indeed, the same “directly or indirectly” language that MCI requests in this
7 case is used in section 2.23 of Horry’s model contract to define an End User of
8 InterLATA service. That section is agreed-upon language in the General Terms
9 and Conditions attachment of the contract being arbitrated before this
10 Commission. There is no legitimate reason why different language should be
11 required for local service end users.

12
13 **Q. DOES HORRY PERMIT OTHER CARRIERS TO EXCHANGE**
14 **“INDIRECT” TRAFFIC WITH IT?**

15 A. Yes. For years, Horry has benefited from traffic aggregation done for it by the
16 BellSouth tandems. Traffic aggregation is not only beneficial to Horry, it is a
17 network engineering imperative. Absent traffic aggregation, each Local
18 Exchange Carrier (“LEC”) would have to be directly connected with every other
19 LEC. In a world where new LECs are being created and eliminated daily, direct
20 connection with every LEC is not possible. Therefore, Horry’s proposed contract

¹ Order on Rehearing issued April 13, 2005, by the Public Utilities Commission of Ohio, “In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., The Germantown Independent Telephone CO, and Doylestown Telephone Co.,” paragraph 15, pg.13.

1 language that restricts MCI's traffic to only traffic originated by customers
2 directly connected to MCI's network is unlawful and unreasonable.
3

4 **Q. WILL MCI ACCEPT TRAFFIC FROM END USERS NOT DIRECTLY**
5 **CONNECTED TO HORRY'S NETWORK?**

6 A. Yes. Aggregation of interconnection traffic makes both parties' network
7 engineering more efficient. It is unreasonable for Horry to argue that MCI cannot
8 benefit from traffic aggregation. MCI will accept traffic over its interconnection
9 trunks with Horry that is originated from or terminated to end users that are not
10 directly connected to Horry's networks. Horry should be required to do the
11 same, and accept all properly formatted traffic that MCI desires to send it.
12

13 **Q. WHY DOES HORRY PROPOSE TO LIMIT THE SCOPE OF THE**
14 **INTERCONNECTION AGREEMENT TO INSTANCES IN WHICH**
15 **SERVICE IS PROVIDED TO AN END USER DIRECTLY BY MCI?**

16 A. Horry is proposing to limit the scope of the interconnection agreement in an
17 attempt to protect its business from facility-based competition. Horry provides
18 cable television and Voice-over-Internet Protocol (VoIP) services to customers in
19 Conway and Myrtle Beach, South Carolina, and throughout its region. Time
20 Warner Cable wants to do the same thing, and, therefore, wants to offer services
21 that would compete with Horry's services. Horry's actions in this proceeding are
22 obstructing residential consumers from having a choice of providers for bundled

1 telecommunications, communications, enhanced and information services. Every
2 day that Horry can delay Time Warner Cable's ability to compete in the region is
3 another day that residential customer choice is unduly limited. Horry's actions in
4 this case are doing a great injustice to the citizens of South Carolina.

5
6 As stated by TWCIS in its petition to intervene in this proceeding, to reach
7 premises not served by its network it is necessary for certain calls to traverse the
8 public switched telephone network ("PSTN"). TWCIS desires to utilize
9 telecommunications service providers, such as MCI, to deliver some of its traffic
10 to the PSTN. By limiting the scope of the interconnection agreement to only end
11 user traffic directly connected with MCI, Horry is attempting to prevent MCI
12 from providing telecommunications services to Time Warner Cable and others.
13 The result of this will be to limit the choices residential consumers can have for
14 local service in Horry's territories.

15
16 MCI proposes to add the phrase "or indirectly" to the ICA so it can offer to Time
17 Warner Cable and others the telecommunications services they may need to
18 compete in Horry's territory.

19
20 **Q. WHAT IS THE RELATIONSHIP OF TIME WARNER CABLE TO MCI?**

21 **A.** Time Warner Cable has contracted with MCI to provide local public switched
22 network services in many parts of the country. As Time Warner Cable Vice

1 President Julie Y. Patterson said during the Commission's Feb. 3, 2005 hearing
2 on that company's certification to serve certain rural areas:²

3
4 In addition to terminating calls to customers on the public switched
5 network, our PSTN partner, MCI, would assist us with delivering
6 calls to enhanced 911 public safety answering points. Calls destined
7 for 911 would be routed from our hybrid fiber coaxial network to a
8 gateway device where again the conversion would take place
9 between the Internet Protocol format into circuit switched format,
10 and the call would then be routed to MCI and then from MCI to the
11 appropriate 911 tandem switch or PSAP directly.

12
13 For calls that are not destined for the public switched network and in
14 fact are destined for another Time Warner Cable telephone customer,
15 the call would traverse our hybrid fiber coaxial plan[t], and Internet
16 Protocol would never hit the gateway device and never perform a
17 conversion into circuit switched format and instead the call would be
18 routed to another Time Warner Cable customer entirely in the
19 Internet Protocol format.
20

21
22 **Q. ARE THERE ANY TECHNICAL REASONS WHY HORRY SHOULD BE**
23 **PERMITTED TO RESTRICT TRAFFIC MCI DELIVERS TO IT TO END**
24 **USER TRAFFIC DIRECTLY CONNECTED TO MCI'S NETWORK?**

25 A. No. Horry's switches should handle a byte of PSTN traffic from a customer
26 directly connected to MCI's network the same way they handle a byte of PSTN
27 traffic of a customer indirectly connected to MCI's network. In the local
28 switching of traffic, no matter how the customers' traffic reaches MCI's switch,

² Docket No. 2003-362-C: Time Warner Cable Information Services (South Carolina), LLC –Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services. (See transcript pages 31 (23-25), 32 (1-25) and 33 (1)).

1 either through a loop we own directly or through some other way, Horry should
2 not be permitted to discriminate against certain types of traffic and have a say on
3 how MCI interfaces with the End User customer.

4
5 **Q. IN AN ATTEMPT TO JUSTIFY THEIR PROPOSED PROHIBITION ON**
6 **INDIRECT TRAFFIC, HORRY HAS RAISED AN ISSUE CONCERNING**
7 **A POTENTIAL FOR RATE ARBITRAGE. WHAT IS MCI'S RESPONSE**
8 **TO THIS ISSUE?**

9 **A.** This issue is a red herring. It has no substance and only exists to cloud or confuse
10 matters at hand. In this instance, MCI has committed to provide Horry with
11 Calling Party Number ("CPN") and utilize separate local and toll trunk groups for
12 the exchange of traffic. As such, no new opportunities for rate arbitrage would be
13 created. Further, MCI's commitment in this regard is an example of MCI
14 agreeing to something that it is not obligated to do, simply in an effort to be more
15 than reasonable and obtain a negotiated agreement.

16
17 **Q. AT PAGE 7 OF ITS RETURN TO MCI'S PETITION IN THIS**
18 **PROCEEDING, HORRY STATED THAT "NEITHER THIRD PARTIES**
19 **NOR THEIR TRAFFIC ARE PART OF AN INTERCONNECTION**
20 **AGREEMENT BETWEEN HORRY AND MCI". HOW DO YOU**
21 **RESPOND?**

1 A. This statement is incorrect. As Horry states in a footnote to that statement [?], the
2 agreement includes transit traffic, which is discussed (including the compensation
3 for such traffic) in negotiated language in the Interconnection attachment. Transit
4 traffic is traffic from, or destined to, a third party. Further, Horry cannot be
5 permitted to unreasonably discriminate against certain types of traffic and Horry
6 has no authority to restrict the types of traffic MCI may hand off for termination.
7 Section 251(b)(1) of the Act imposes the duty on all LECs “not to prohibit, and
8 not to impose unreasonable or discriminatory conditions or limitations on, the
9 resale of its telecommunications services.” In any event, Horry seems to contend
10 that so long as MCI “controls” the traffic then that traffic can be terminated under
11 the provisions of the agreement. The Commission should understand that MCI
12 will have the same amount of control over the traffic to and from Time Warner
13 Cable, as Horry itself has over traffic to and from its end user customers.

14
15 **Q. WITH RESPECT TO ISSUE #7, HORRY IN ITS RETURN TO THE**
16 **PETITION DISCUSSES TRANSIT TRAFFIC. WHAT IS THE REASON**
17 **MCI RAISES THE POINT REGARDING TRANSIT TRAFFIC IN ITS**
18 **PETITION?**

19 A. MCI raises the point regarding transit traffic in its petition because Horry
20 continues to contend that it is an issue. MCI is concerned that the transit traffic
21 language proposed by Horry, “**originated or terminated directly between**
22 **Parties End User Customers,**” may be interpreted to prohibit indirect traffic
23 from end user customers and its wholesale service arrangements with Time

1 Warner Cable and others. To the extent this is how Horry's proposed language
2 will be interpreted, this language must be removed for all the reasons stated
3 previously.

4 **Q. PLEASE DISCUSS ISSUE #9 WITH REGARD TO NUMBER**
5 **PORTABILITY.**

6 A. Horry contends there is no porting required as between a telecommunications
7 service provider and a non-telecommunications provider. This contention,
8 however, is not relevant. In this case, MCI *is* a telecommunications service
9 provider, and the services it is providing *are* telecommunications services. These
10 services include local switching, termination and transport of traffic, 911 services,
11 directory assistance, as well as LNP. It is not relevant how Time Warner Cable
12 characterizes its services to its end users.

13
14 Horry claims that MCI should not be permitted to enable number portability for
15 Time Warner Cable's customers because Time Warner Cable is not a
16 telecommunications provider, and therefore what MCI proposes is not service
17 portability. Horry's position is contrived and should be seen for what it is: an
18 effort to justify its goal of blocking facility-based competition in Horry's
19 territories. MCI is requesting interconnection. MCI will be porting the numbers.
20 MCI is providing telecommunications service. In this instance, it does not matter
21 what Time Warner Cable, or any other third party to which MCI may provide
22 telecommunications services, is doing. Time Warner Cable is not interconnecting
23 with Horry. MCI's local switch will be handling the traffic from Time Warner

1 Cable's customers, using its numbers or porting numbers to end users in Horry's
2 territories. Generally, the configuration is similar to a business customer's PBX
3 connecting its individual employees' offices and locations to MCI's local
4 network.

5
6 Horry cites no law preventing number porting in this situation. Further, 47 C.F.R.
7 section 52.21(q) applies to the "ability of users of telecommunications services"
8 to port numbers; significantly, the reference in the rule is to "users," not "end
9 users." Here MCI seeks to obtain numbers that may enable Time Warner Cable, a
10 user of telecommunications services, to provide its products and services.

11
12 **Q. HAS THE FCC ADDRESSED THIS ISSUE?**

13 **A.** Yes. The numbering services that MCI is doing elsewhere for Time Warner
14 Cable and is planning to do in South Carolina should not result in any
15 controversy. In fact, the FCC has already gone one step further than what MCI is
16 requesting and ordered ILECs to provide telephone numbers directly to a VoIP
17 provider.³ In its SBCIS order, the FCC clearly stated: "To the extent other
18 entities seek similar relief we would grant such relief to an extent comparable to
19 what we set forth in this Order."

20

³ See, FCC's CC Docket 99-200 Order, In the Matter of Administration of the North American Numbering Plan, released February 1, 2005 ("SBCIS Order"). In this Order the FCC granted SBCIS waiver of section 52.15(g)(2)(i) of its numbering rules so that SBCIS did not have to obtain an interconnection agreement in order to obtain numbers for its customers.

1 Further, the FCC did not condition granting similar waivers on completion of its
2 “request” that the North American Numbering Committee “review whether and
3 how our numbering rules should be modified to allow IP-enabled service
4 providers access to numbering resources in a manner consistent with our
5 numbering optimization policies.”⁴ The FCC also noted as follows:

6 a few commenters urge the Commission to address SBCIS’s
7 petition in the current *IP-Enabled Services* proceeding. We decline
8 to defer consideration of SBCIS’s waiver until final numbering
9 rules are adopted in the *IP-Enabled Services* proceeding. The
10 Commission has previously granted waivers of Commission rules
11 pending the outcome of rulemaking proceedings, and for the
12 reasons articulated above, it is in the public interest to do so here.⁵
13
14

15 As MCI noted in its initial petition, the FCC does not condone ILEC efforts to
16 block VoIP traffic. See *In the Matter of Madison River Communications, LLC*
17 *and affiliated companies*, Consent Decree and Order, File No. EB-05-IH-0110,
18 DA 05-543 (March 3, 2005). Horry’s efforts to restrict LNP activity for third
19 parties should likewise be rejected as an illegal effort to block Time Warner’s
20 VoIP business and MCI’s local exchange competition. More recently, the FCC
21 made it clear that it would not tolerate discrimination among different landline
22 porting of telephone numbers. Responding to comments from Time Warner,
23 Bright House Networks and Comcast Phone:

24 We take this opportunity to remind carriers that the Act requires,⁶ and we
25 intend to enforce, non-discriminatory number porting between LECs,
26 including our previous conclusion “that carriers may not impose non-
27 porting related restrictions on the porting out process.” Because of these
28 requirements, when an incumbent LEC receives a request for number

⁴ SBCIS Order, at Paragraph 11, pg. 7.

⁵ Ibid.

⁶ 47 U.S.C. § 251(b)(2).

1 portability, it is required to observe the same rules, including provisioning
2 intervals, as any other LEC and cannot avoid its obligations by pleading
3 non-porting related complications or requirements such as the presence of
4 DSL service on a customer's line. We also retain the authority to evaluate
5 specific objections to incumbent LEC's porting policies in proceedings
6 seeking enforcement action.⁷

7
8 This FCC order dealt with the situation of the customer being served by the
9 ILEC's DSL service being used to delay porting to a customer served by a cable
10 modem. Horry's proposed restriction on the porting telecommunications carrier
11 "directly" serving the end user is not any less discrimination.

12
13 The FCC is not prohibiting IP-enabled service providers from obtaining numbers
14 and being subject to its number porting rules. Further, the FCC is not holding up
15 access to numbers until final numbering rules for IP-Enabled Services are
16 developed. And there are no restrictions on telecommunications carriers, such as
17 MCI, that would block it from issuing orders to port numbers under current
18 industry standards. The Commission should see through Horry's contrived
19 arguments to block facilities-based competition and accept MCI's proposed
20 language.

21
22 **Q. HAS MCI SUCCESSFULLY NEGOTIATED INTERCONNECTION**
23 **AGREEMENTS WITH OTHER INDEPENDENT ILECS FOR THE**

⁷ Paragraph 36 of FCC's March 25, 2005 WC Docket No. 03-251 order: In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers. In a separate statement, Commissioners Michael Copps and Jonathan Adelstein emphasized: "We join today's decision, however, in one key aspect. We support the effort in this action to reinforce non-discriminatory number porting, including between wireline and cable carriers. Congress was clear that number portability is a basic duty of local exchange carriers. Because this decision accurately clarifies this requirement, we approve in part."

1 **PURPOSE OF PROVIDING TIME WARNER CABLE THE**
2 **TELECOMMUNICATIONS SERVICES IT NEEDS TO EFFICIENTLY**
3 **PROVIDE VOIP SERVICES IN ICO TERRITORIES?**

4 A. Yes. MCI has successfully signed approximately thirty (30) negotiated
5 interconnection agreements with Incumbent Independent Local Exchange Carriers
6 ("ITCs") for the purpose of providing Time Warner Cable the
7 telecommunications services it needs to efficiently provide VoIP services in the
8 independent ILECs' territories in South Carolina and other states.

9
10 **Q. ARE THESE SIGNED INTERCONNECTION AGREEMENTS ONLY**
11 **WITH LARGE ITCs?**

12 A. No. These agreements are with large, mid-size and very small ITCs.

13
14 **Q. WHY SHOULD THE FACT THAT MCI HAS SUCCESSFULLY SIGNED**
15 **APPROXIMATELY THIRTY (30) NEGOTIATED INTERCONNECTION**
16 **AGREEMENTS WITH ITCs BE RELEVANT TO THE COMMISSION?**

17 A. MCI has no leverage to force any ILEC to agree to do anything it is not obligated
18 to do. As such, the fact that approximately 30 ITCs have voluntarily agreed to the
19 interconnection terms and conditions that MCI requests in this proceeding
20 demonstrates to the Commission that the interconnection agreement terms and
21 conditions that MCI seeks in this arbitration are more than reasonable.

1
2 **Q. ARE THERE PUBLIC POLICY REASONS WHY THE COMMISSION**
3 **SHOULD ADOPT MCI'S PROPOSED INTERCONNECTION**
4 **AGREEMENT LANGUAGE FOR THESE ISSUES?**

5
6 **A.** Absolutely. The business that MCI and Time Warner will bring to Horry's
7 territory is what most consumer advocates have dreamed about for years. The
8 business that MCI and Time Warner will bring to Horry's territory will provide or
9 introduce a self-effectuating regulator to the market. This regulator is customer
10 choice. The local competition and ability for consumers to choose service
11 providers that Time Warner Cable will bring to these RLEC territories should
12 provide the Commission reason ample reason to accept the language proposed by
13 MCI. MCI's proposed interconnection agreement language, which permits the
14 exchange of traffic from end users directly or indirectly connected to either
15 party's network will promote local competition, advance the public interest, is
16 technically and administratively necessary, and therefore should be accepted.

17
18 **C. IDENTIFICATION OF THE CALLING PARTY**
19

20 **ISSUE #1**

21
22 **Issue:** Should companies be required to provide JIP information?
23 (GT& C, section 9.5)

24
25 **MCI position:** No. This is not a mandatory field. No other ILEC
26 has asked that MCI provide this information, let
27 alone on 90% of calls. The ATIS Network
28 Interconnection Interoperability Forum is still
29 working on rules for carriers choosing to populate
30 this field for VOIP traffic and wireless carriers. The

1 revised instructions for JIP for landline carriers was
2 only released in December. MCI does not oppose
3 putting "OR" as a condition of providing this or
4 CPN on calls. But there is only a recognized
5 industry standard to provide CPN currently.
6

7 **ILEC position:** Horry believes this information is necessary to
8 establish the jurisdiction of calls.
9

10 **Disputed Language:** The Parties shall each perform traffic recording and
11 identification functions necessary to provide the services
12 contemplated hereunder. Each Party shall calculate
13 terminating duration of minutes used based on standard
14 automatic message accounting records made within each
15 Party's network. The records shall contain the information
16 to properly assess the jurisdiction of the call including ANI
17 or service provider information necessary to identify the
18 originating company, including **the JIP and** originating
19 signaling information. The Parties shall each use
20 commercially reasonable efforts, to provide these records
21 monthly, but in no event later than thirty (30) days after
22 generation of the usage data.
23

24 **ISSUE #6**

25
26 **Issue:** Should Parties be required to provide (a) CPN and JIP; and
27 (b) pay access charges on all unidentified traffic?
28 (Interconnection, section 2.7.7)

29
30 **MCI position:** MCI (a) is willing to provide CPN or JIP (but not both as
31 the latter is an optional SS7 parameter. (No other ILEC has
32 proposed that MCI must provide JIP) and (b) believes that
33 all unidentified traffic should be priced at same ratio as
34 identified traffic. A price penalty should not be applied for
35 something MCI does not control. MCI is open to audits
36 and studies by either Party if one or the other thinks the
37 10% or more of traffic missing CPN information is an
38 effort to avoid access charges.
39

40 **ILEC position:** Horry believes it needs JIP and CPN data 90% of the time
41 to determine jurisdiction and want to apply a penalty of
42 paying access charges to encourage its provision when
43 levels of unidentified traffic are above 10%.
44

Disputed Language: If either Party fails to provide accurate CPN (valid originating information) or and Jurisdiction Information Parameter (“JIP”) on at least ninety percent (90%) of its total originating INTRALATA Traffic, then traffic sent to the other Party without CPN or JIP (valid originating information) will be handled in the following manner. All unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. The remaining 10 percent (10%) of unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. If the unidentified traffic exceeds ten percent (10%) of the total traffic, all the unidentified traffic shall be billed at a rate equal to ILEC’s applicable access charges. The originating Party will provide to the other Party, upon request, information to demonstrate that Party’s portion of traffic without CPN or JIP traffic does not exceed ten percent (10%) of the total traffic delivered. The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure and to assist its correction.

ISSUE #8

Issue:	Should Parties have to provide the specified signaling parameters on all calls? (Interconnection, section 3.6)
---------------	--

MCI position: No. Percentages for CPN have been set above and JIP is not mandatory. MCI will agree not to alter parameters received from others, but it cannot commit to more than 90% CPN.

ILEC position: Yes. This information should be provided on all calls even though percentages set elsewhere are less than 100%.

Disputed Language: Signaling Parameters: ILEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling Party Number, **JIP** and destination called party number, etc.) pursuant 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be *passed along as received* **provided** including CPN, JIP, Originating Line, Calling party category, Charge Number, etc. All privacy indicators will be honored

1 **Q. WHERE ARE MCI'S LOCAL (CLASS 5) SWITCHES THAT WOULD**
2 **HANDLE TRAFFIC TO THESE RLECS LOCATED?**

3 A. MCI's class 5 switches that will handle traffic with these RLECs are located in
4 Atlanta and Charlotte. Thus, there are a limited number of switches from which
5 Horry would be receiving call information from MCI.

6
7 **Q. HOW DOES THE USE OF MCI LOCAL SWITCHES DIFFER FROM**
8 **ILEC SWITCHES, INCLUDING INDEPENDENT TELEPHONE**
9 **COMPANY SWITCHES?**

10 A. MCI local switches are used much differently in the network than ILEC switches.
11 Like other Competitive Local Exchange Carriers ("CLECs"), MCI uses its local
12 switches to cover multiple ILEC serving areas, which cross state lines and LATA
13 boundaries. Usually, ILEC switches are much more limited in their geographic
14 reach.

15
16 **Q. PLEASE DESCRIBE "JURISDICTION INFORMATION**
17 **PARAMETER" ("JIP")?**

18 A. JIP is a six-digit field contained within the packet of an SS7 message. "SS7" is
19 "signaling system 7." SS7 is a global standard for telecommunications defined
20 by the International Telecommunication Union ("ITU") Telecommunication
21 Standardization Sector ("ITU-T"). The standard defines the procedures and
22 protocol by which network elements in the PSTN exchange information over a
23 digital signaling network to effect call setup, routing, local number portability

1 ("LNP") and control. JIP can be used in certain situations to convey information
2 about the location of the calling party.
3

4 **Q. IS JIP AN INDUSTRY STANDARD?**

5 A. No. As conceded by Horry, populating the JIP field within the SS7 message is
6 optional. In January of this year, the Network Interconnection Interoperability
7 Forum ("NIIF") released recommend rules for how the JIP field within the SS7
8 message could be utilized. The NIIF is a committee of the Alliance for
9 Telecommunications Industry Solution ("ATIS"). Another committee of ATIS,
10 the Ordering and Billing Forum ("OBF"), is investigating many other open issues
11 regard to the JIP. Thus, the reference to JIP suggested by Horry in the
12 interconnection agreement is inappropriate. Further, the JIP language suggested
13 by Horry is unnecessary particularly where the agreed-upon language states that
14 "(e)ach Party shall calculate terminating duration of minutes used based on
15 standard automatic message accounting records."
16

17 **Q. DOES BELLSOUTH REQUIRE CARRIERS IT INTERCONNECTS WITH**
18 **IN SOUTH CAROLINA TO USE JIP?**

19 A. No. BellSouth does not use the JIP to determine traffic jurisdiction or require
20 LECs that it interconnects with to populate JIP.
21

22 **Q. WHAT IS THE INDUSTRY STANDARD IN THIS REGARD?**

1 A. CPN is the recognized industry standard for transmitting messaging regarding the
2 jurisdictional origin of calls. The FCC has determined that interstate passage of
3 CPN is in the public interest because, consistent with the statutory intent
4 underlying Sections 1 and 7 of the Communications Act of 1934, as amended,
5 CPN makes many new services and efficiencies possible. The FCC has also
6 adopted a federal rule and model for the passing of CPN. (See 47 C.F.R. Part 64)
7 With CPN, information regarding the jurisdictional origin of calls is passed
8 between carriers so that they may appropriately distinguish and rate calls to
9 determine appropriate compensation between carriers (e.g., for reciprocal
10 compensation or for access charges). MCI's switches pass CPN to other carriers
11 in accordance with industry standards.

12
13 **Q. WHAT DOES MCI RECEIVE FROM OTHER CARRIERS?**

14 A. MCI receives CPN and in certain cases, JIP. However, MCI uses CPN for call
15 rating on the traffic it handles, including traffic originated by these RLECs as
16 VoIP. It is standard industry practice to compare the NPA-NXX codes of the
17 calling and called party to determine the proper rating of a call. A call is rated as
18 local if the called number is assigned to a rate center within the local calling area
19 of the originating rate center.

20
21 **Q. WHY HAS JIP BEEN SUGGESTED BY SOME IN THE INDUSTRY?**

22 A. A major reason for the development of JIP relates to the growth of the wireless
23 industry: for example, if someone from New York uses a cell phone in a Florida

1 hotel, the cell phone number will indicate what carrier is being used to originate
2 the call, and the extra six digits in JIP could indicate the physical cell site location
3 that originated the call. In the wireless context, this additional information could
4 determine the routing of the call, and facilitate access to toll-free calls, which
5 sometimes are blocked at present. In contexts other than wireless, the industry
6 has been concerned about "phantom traffic," which is defined as calls that lack
7 sufficient information to determine the jurisdiction (i.e., interstate or intrastate) of
8 the traffic for billing purposes.

9
10 **Q. IS JIP A PANACEA FOR THE JURISDICTIONAL RATING OF**
11 **TRAFFIC?**

12 A. No. If a call is generated from a wireline phone and terminates with a wireless
13 phone, it is difficult to know in what location the call termination has occurred,
14 because that JIP field has not yet been addressed. It is difficult for the terminating
15 carrier to determine in what city the caller was located. This could affect, for
16 example, the rates charged. The NIIF committee is working on this issue.

17
18 **Q. WILL MCI PROVIDE JIP ON THE TRAFFIC IT HANDS OFF TO**
19 **HORRY?**

20 A. Yes. However, it will be the JIP of MCI's switch and therefore cannot be used to
21 accurately rate traffic.

1 **Q. WHY CAN'T THE JIP PROVIDED BY MCI'S LOCAL SWITCH BE**
2 **USED BY Horry TO ACCURATELY RATE TRAFFIC?**

3 A. MCI's local switches cover more than one RLEC local calling area. For example,
4 assume an end user that originates a call is physically located in Columbia, South
5 Carolina. Also assume that the MCI local switch (i.e., the "JIP") is physically
6 located in Charlotte, North Carolina. (In fact, as described above, this is the
7 case.) And next, assume the end user at the terminating end of the call is
8 physically located in Columbia, South Carolina. Under these facts - which are not
9 only possible, but probable, given the location of MCI's switch serving the
10 Columbia area - the JIP to the terminating end user would indicate that this is a
11 toll call from Charlotte, NC (and that access charges are due), even though the
12 originating end user and terminating end user are both located in Columbia, South
13 Carolina, and the call should be appropriately rated and billed to the originating
14 end user as a local call.

15
16 **Q. ARE THERE ALSO INSTANCES IN WHICH THE USE OF JIP TO**
17 **ESTABLISH JURISDICTION WOULD RESULT IN CATEGORIZING A**
18 **TOLL CALL AS A LOCAL CALL?**

19 A. Yes. For instance, assume the originating end user is physically located in
20 Columbia, South Carolina; the switch is physically located in Charlotte, North
21 Carolina; and the terminating end user is physically located in Charlotte, North
22 Carolina. Clearly this situation - which, again, is to be expected, given the
23 location of MCI's switches - should be appropriately rated and billed as a toll

1 call. The JIP to the terminating end user, however, would erroneously
2 characterize the call as a local call.
3

4 **Q. HORRY MAINTAINS THAT THE CPN FOR SOME TRAFFIC IS**
5 **DISGUISED AS LOCAL TRAFFIC IN ORDER FOR CARRIERS TO**
6 **AVOID THE PAYMENT OF ACCESS CHARGES. WHAT IS YOUR**
7 **RESPONSE?**

8 A. MCI does not alter the CPN and will not alter the CPN. Indeed, CPN cannot be
9 selectively manipulated or deleted in route.
10

11 **Q. CAN JIP BE ALTERED TO DISGUISE TRAFFIC IN ORDER FOR**
12 **CARRIERS TO AVOID THE PAYMENT OF ACCESS CHARGES?**

13 A. Yes, it is possible to alter the JIP to disguise traffic in order to avoid the payment
14 of access charges. As such, the use of JIP for call rating would not solve the
15 problem Horry seeks to remedy and, as discussed herein, would create new
16 problems.
17

18 **Q. IS THE EXAMPLE USED BY HORRY RELATING TO THE USE OF JIP**
19 **OF LIMITED VALUE TO THE COMMISSION IN RESOLVING THIS**
20 **ISSUE?**

21 A. Yes. Horry offers an example in which an end user, located in California, is
22 calling South Carolina. The example does not include the factual situation in
23 which the originating end user is located in South Carolina, and the MCI local

1 switch is located in North Carolina or Georgia. Another reason the example cited
2 by Horry is inapposite is because MCI uses long distance trunks, not local trunks,
3 to transport long distance calls; the dispute between the parties does not involve
4 long distance trunks. In addition, the parties have the right to audit traffic.

5
6 **Q. COULD THESE PROBLEMS BE MITIGATED BY THE PROVISION OF**
7 **A UNIQUE JIP FOR EVERY ILEC CALLING AREA SERVED BY MCI'S**
8 **LOCAL SWITCH AS SUGGESTED BY HORRY?**

9 A. If MCI's class 5 switches could do such a thing, yes. However, MCI's class 5
10 switches cannot provide a unique JIP for every ILEC local calling area they serve.
11 Further, the provision of multiple JIPs from a single class 5 switch is not a
12 required industry standard.

13
14 **Q. COULD MCI PROVIDE A UNIQUE JIP FOR EVERY LOCAL CALLING**
15 **AREA SERVED BY EACH OF ITS CLASS 5 SWITCHES?**

16 A. No. A requirement that CLECs provide a unique JIP for every local calling area
17 served by a CLEC switch would require the scope of the CLEC switch to be
18 limited because separate switch partitions would have to be created for each JIP
19 and separate look up tables would have to be managed and created for each RLEC
20 local calling area. This would create significant additional equipment, software
21 and administrative cost and would create network inefficiency. The economies of
22 scale available to CLECs for switching would be drastically reduced. A
23 requirement that CLECs provide ILECs with a unique JIP for every local calling

1 area served by the CLEC switch would cause CLECs to limit the calling area
2 scope of their class 5 switches (i.e. exit certain markets) and would undermine the
3 FCC's recent TRRO decision that CLECs are not impaired without access to
4 ILEC unbundled switching.

5
6 **Q. HOW WOULD A REQUIREMENT TO PROVIDE A UNIQUE JIP FOR**
7 **EVERY LOCAL CALLING AREA SERVED BY MCI'S CIRCUIT**
8 **SWITCH UNDERMINE THE FCC'S TRRO DECISION REGARDING**
9 **THE AVAILABILITY OF UNBUNDLED SWITCHING AT COST BASED**
10 **RATES UNDER SECTION 251 OF THE ACT?**

11 **A.** The FCC's decision to deny CLEC access to unbundled ILEC circuit switching at
12 regulated rates under section 251 of the Act was premised on the ability of CLEC
13 switches to serve a geographic area large than that served by ILEC circuit
14 switches. As stated at paragraph 207 of the FCC's TRRO,⁸

15 We find, based on the evidence in this record, that the fact that
16 competitive LECs are able to serve larger geographic areas using
17 self-provided switches mitigates to some extent the incumbent
18 LECs' advantages of scale. Competitive LECs are able to serve
19 larger geographic areas because they can deploy higher capacity
20 switches and use dedicated transport in combination with these
21 switches to serve customers throughout a wider geographic area,
22 beyond the particular [ILEC] wire center where the switch is
23 located.... Further, the ability of competitive circuit switches to
24 serve wider geographic regions reduces the direct fixed cost of
25 purchasing circuit switching capability and allows competitive
26 carriers to create their own switching efficiencies.
27

⁸ In the matter of Unbundled Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, released February 4, 2005.

1 As such, the FCC said that because MCI's circuit switches could efficiently serve
2 a larger geographic area than ILEC circuit switches, it did not need access to
3 ILEC circuit switching at regulated rates. Horry's proposal to require MCI to
4 provide a unique JIP for each local calling area served by each switch would
5 reduce the geographic area that MCI's circuit switches can efficiently serve. As
6 such, this proposal by Horry would violate that FCC's TRRO decision.
7

8 **Q. WHAT DOES MCI PROPOSE SHOULD BE USED BY HORRY TO RATE**
9 **TRAFFIC?**

10 A. Since the use of JIP for call rating would solve nothing and create many
11 problems, MCI proposes to send the RLEC the industry standard CPN, just as we
12 do for all other carriers, including all of the other ITCs that have voluntarily
13 agreed to negotiated ICAs with MCI that are used to provide service to Time
14 Warner Cable. Horry should use the Calling Party and Called Party Number to
15 rate traffic. MCI will continue to do the same.
16

17 **Q. WOULD HORRY BE PREJUDICED BY THE USE OF CPN FOR CALL**
18 **RATING?**

19 A. No. Horry can trace the jurisdiction of the call based on the ported number and
20 the NPA-NXX of the call. As described above, there will be a limited number of
21 local switches that MCI will be using to carry calls to and from the ILEC's
22 service areas.
23

1 **Q. WHAT ABOUT OTHER CLECS ADOPTING THIS AGREEMENT?**

2 A. Again, in order for other CLECs to obtain the terms and conditions of MCI's
3 interconnection agreement with Horry they would be required to adopt the entire
4 agreement. As such, Horry would have the audit rights contained in the proposed
5 agreement to police the actions of other CLECs and could bring complaints if
6 CPNs are being altered.

7
8 **Q. HORRY ALSO MAINTAINS THAT TOLL CALLS ARE INCORRECTLY**
9 **IDENTIFIED BY CPN WHEN TELEPHONE NUMBERS ARE ASSIGNED**
10 **TO END USERS WHO ARE NOT PHYSICALLY LOCATED IN THE**
11 **RATE CENTER WHERE THE NUMBER IS ASSIGNED. WHAT IS**
12 **YOUR RESPONSE?**

13 A. First of all, it is and has been for many years, standard industry practice for both
14 Horry and MCI to establish virtual NXX codes for certain customers. MCI has,
15 however, voluntarily agreed not to assign virtual NXX codes to Time Warner
16 Cable customers in this instance. This is another example of MCI voluntarily
17 agreeing to something in this ICA that it is not obligated to do simply in an effort
18 to be more than reasonable and obtain a negotiated agreement. As this issue
19 relates to dial-up ISP Bound traffic, this issue is discussed below with regard to
20 Issue #8.

21
22 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE #1?**

23 A. The Commission should adopt MCI's proposed language.

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Q. WITH REGARD TO ISSUE #6, IS IT REASONABLE FOR HORRY TO IMPOSE ACCESS CHARGES ON LOCAL TRAFFIC?

A. No. Horry contends that if greater than 10 percent of traffic exchanged is unidentified then they should be permitted to assess access charges on the unidentified traffic. MCI is willing to work with Horry if less than 90% of either Party's traffic has CPNs, but it does not agree to be subject to a penalty for the unidentified traffic. In the event that unidentified traffic occurs, it should be rated at the same ratio of local to toll as the identified traffic. Concerns over fraud should be dealt with by either party through audit provisions and cooperative efforts, per the last sentence of agreed language above, should be used first to find out why large percentages of traffic are missing CPN information.

Q. WITH REFERENCE TO ISSUE #8, SHOULD THE PARTIES HAVE TO PROVIDE THE SPECIFIED SIGNALING PARAMETERS?

A. Parties should be required to provide signaling parameters in compliance with industry standards. MCI expects that its business will be highly residential in the areas served by Horry, and because of this, calling party number will exist on most calls. However, just as occurs today with all other ILECs, MCI cannot avow that CPN will exist on all calls.

Q. WHY DOESN'T CPN EXIST ON ALL CALLS TODAY?

1 A. One reason that CPN does not exist on calls is because Business customers with
2 PRI Trunking are allowed to set CPN at their PBX and deliver that information to
3 the local switch to which they are physically connected. In most cases, the
4 customer delivers a CPN that is physically located within the customer's building
5 facility. There are situations, however, in which a customer prefers to establish an
6 8XX Toll Free Telephone number or even a North American Dialing plan
7 telephone number that is at a different Call Center and is physically located in
8 another part of the country. The Primary Rate Interface establishes the CPN field
9 and is passed on to the Local switch, which in turn passes this information on to
10 the PSTN via SS7. The situation where the 8XX Toll Free is set as CPN is a
11 normal business practice among Business customers throughout the United States
12 and complies with rules as set forth by the Federal Trade Commission populating
13 CPN for Telemarketing centers. As a result, the MCI Local switch will pass the
14 CPN that is sent by the PBX, and is not set by the Local switch.

15
16 **D. INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC**
17 **WITH VIRTUAL NXX CODES,**
18 **AND FOR OUT-OF-BALANCE TRAFFIC**

19
20 **ISSUE #3**

21
22 **Issue:** Is ISP traffic in the Commission's or FCC's jurisdiction in
23 terms of determining compensation when FX or virtual
24 NXX service is subscribed to by the ISP? (GT&C,
25 Glossary, sections 2.25, 2.28 and 2.34)
26
27 **MCI position:** See Issue No. 4 (b). ISP traffic is in the FCC's jurisdiction
28 and subject to reciprocal compensation treatment pursuant
29 to its ISP Remand Order as amended by the CoreCom
30 decision. The Texas PUC recently clarified that its order
31 applying access charges to CLEC FX traffic only applied to

1 non-ISP traffic and that the FCC's ISP Remand order
2 applies to ISP traffic. While MCI believes that it is
3 discriminatory to allow ILECs to rate their FX and virtual
4 NXX traffic as local when CLECs are not allowed to do the
5 same, it will not litigate this issue, as concerns Horry, for
6 non-ISP traffic in light of the Commission's previous
7 decisions. However, MCI reserves the right to have its FX
8 and virtual NXX services rated as local if the FCC
9 preempts the subset of states that have inconsistent rulings
10 on the rating of CLEC FX or virtual NXX services.

11
12 **MCI Language:**

INTRALATA TRAFFIC Telecommunications traffic that
13 originates and terminates in the same LATA, including but
14 not limited to IntraLATA toll, ISP bound and Local/EAS.
15 ISP bound traffic will be rated based on the originating
16 and terminating NPA-NXX.

17
18 **ISP-BOUND TRAFFIC**

19
20 ISP-Bound Traffic means traffic that originates from or is
21 directed, either directly or indirectly, to or through an
22 information service provider or Internet service provider
23 (ISP) that may be physically located in the Local/EAS
24 area of the originating End User Customer or has
25 purchased FX service from the CLEC. The FCC has
26 jurisdiction over ISP traffic and sets the rules for
27 compensation for such traffic

28
29 **LOCAL/EAS TRAFFIC**

30
31 Any call that originates from an End User Customer
32 physically located in one exchange and terminates to an
33 End User Customer physically located in either the same
34 exchange or other mandatory local calling area associated
35 with the originating End User Customer's exchange as
36 defined and specified in ILEC's tariff. ISP-bound traffic
37 may be carried on local interconnection trunks but will be
38 rated based on the originating and terminating NPA-
39 NXX)

40
41
42 **ILEC position:**

See Issue No. 4 (b)

43
44 The Commission's orders cover ISP-bound traffic in saying
45 access charges apply to virtual NXX traffic. ISP traffic

1 should be based on the physical location of the customer
2 otherwise access charges apply.

3
4 **ILEC Language:**

INTRALATA TRAFFIC Telecommunications traffic that
5 originates and terminates in the same LATA, including but
6 not limited to IntraLATA toll, ISP bound and Local/EAS.

7
8 **ISP-BOUND TRAFFIC**

9
10 ISP-Bound Traffic means traffic that originates from or is
11 directed, either directly or indirectly, to or through an
12 information service provider or Internet service provider
13 (ISP) who is physically located in an exchange within
14 the Local/EAS area of the originating End User
15 Customer. Traffic originated from, directed to or
16 through an ISP physically located outside the
17 originating End User Customer's Local/EAS area will
18 be considered switched toll traffic and subject to access
19 charges.

20
21
22 **LOCAL/EAS TRAFFIC**

23
24 Any call that originates from an End User Customer
25 physically located in one exchange and terminates to an
26 End User Customer physically located in either the same
27 exchange or other mandatory local calling area associated
28 with the originating End User Customer's exchange as
29 defined and specified in ILEC's tariff.

30
31 **ISSUE #4(B)**

32
33 **Issue:**

Should MCI have to provide service (b) only to End Users
34 physically located in the same LATA to be covered by this
35 agreement? (Interconnection, section 1.1)

36
37 **MCI position:**

(b) No. As stated with regard to issue #8, ISP-bound traffic
38 is under the FCC's jurisdiction, and it never said its ISP
39 reciprocal compensation orders do not apply to virtual
40 NXX traffic. FX/ISP provider customers do not have to be
41 physically located in the LATA to be treated the same as
42 voice traffic. The FCC has established a compensation
43 regime for ISP traffic that does not require payment of
44 access charges.

ILEC position: MCI must be providing service directly to End Users physically located in the LATA. No law says Horry cannot limit interconnection agreements to non-wholesale arrangements. Also, the Commission's rulings on "virtual NXX traffic" apply to ISP-bound traffic too. The FCC's ISP Remand Order never discussed ISP FX arrangement specifically so Horry does not believe the FCC's compensation regime for ISP-bound traffic applies.

Disputed Language: This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA.** This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to **Sections 251 (a) and (b) of the Act.**

ISSUE #5

Issue: Should all intraLATA traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance? (Interconnection, section 2.4)

MCI position: MCI believes reciprocal compensation rates should apply for ISP and non-ISP Local /EAS traffic if out of balance traffic (60/40). MCI believes the recent CoreCom ruling allows it to seek reciprocal compensation for ISP traffic in new markets.

ILEC position: Horry believes all traffic should be bill and keep.

Disputed Language: The Parties agree to only route IntraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instruction and is not a provision of

1 this Agreement. Both Parties agree that compensation for
2 intraLATA Traffic shall be in the form of the mutual
3 exchange of services provided by the other Party with no
4 additional billing if the traffic exchange is in balance.
5 Traffic is considered out-of-balance when one Party
6 terminates more than 60 percent of total Local/EAS
7 traffic exchanged between the Parties. The Parties also
8 agree that the compensation for ISP-bound traffic when
9 out of balance is governed by the FCC's orders on
10 compensation for ISP-bound traffic, specifically (1) the
11 so-call ISP Remand Order [Intercarrier Compensation
12 for ISP-based Traffic, Docket No. 99-68, Order on
13 Remand and Report and Order, 16 FCC Rcd 9151 (2001)]
14 and (2) the modifications to that order made in the FCC's
15 decision on Core Communications' forbearance request
16 (Petition of Core Communications, Inc. for Forbearance
17 Under 47 U.S.C. Paragraph 161 (c) from Application of
18 the ISP Remand Order, WC Docket No. 03-171, released
19 October 18, 2004). Traffic studies may be requested by
20 either party to determine whether traffic is out of
21 balance. Such traffic studies will not be performed more
22 than four times annually. Should a traffic study indicate
23 that Local/EAS/ISP-bound traffic exchanged is out-of-
24 balance, either Party may notify the other Party that
25 mutual compensation between the Parties will commence
26 in the following month. The Parties agree that charges
27 for termination of Local/EAS and ISP-bound Traffic on
28 each Party's respective networks are as set forth in the
29 Pricing Attachment. related to exchange of such traffic
30 issued by either Party except as otherwise provided in
31 this Agreement.
32

33 34 ISSUE #10

35
36 **Issue:** What should the reciprocal compensation rate be for out-of-
37 balance Local/EAS or ISP-bound traffic? (Pricing, D)

38
39 **MCI position:** This is the rate set in the FCC's order on reciprocal
40 compensation rates.

41
42 **ILEC position:** No rate.

43
44 **Disputed Language:** \$0.0007

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Q. WHAT IS THE NATURE OF THE PARTIES' DISAGREEMENT?

A. Horry contends that the FCC Remand Order sets compensation for calls destined to an ISP only when the ISPs modem bank is physically located within the calling party's local calling area. MCI disputes this position because the FCC Remand Order says no such thing. The ISP Remand Order concludes that the jurisdiction of the traffic depends on the nature of the traffic and ISP Bound traffic is subject to FCC jurisdiction. Further, the FCC set a rate of \$0.0007 for such traffic. The FCC ISP Remand Order does not conclude that the end points of traffic matter for determining the jurisdiction of ISP Bound traffic.

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THE VIRTUAL NXX ISSUE?

A. Yes. Prior to the FCC's ISP Remand decision, the Commission ruled in its Adelphia decision that access charges may apply to virtual NXX traffic. However, after the FCC's ISP Remand Order, in its US LEC Arbitration decision, the Commission determined the FCC has jurisdiction over ISP Bound traffic. The FCC's ISP Remand Order is the controlling law and therefore the Commission must conclude that the determination of the appropriate compensation for ISP Bound traffic is within the jurisdiction of the FCC and has been set at \$0.0007 (See, WC Docket No. 03-171 ruling on the Petition of Core Communications, Inc., for Forbearance Under 47 U.S.C. [sec] 160(c) from Application of the ISP Remand Order. "CoreCom")

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Consistent with this FCC decision, MCI only proposes to seek this compensation when traffic is out of balance on a 60-40 basis, similar to the trigger it proposes and at the same rate proposed for non-ISP bound intraLATA traffic.

Q. ARE HARRY’S CONCERNS ABOUT UNDUE OR ADDITIONAL RATE ARBITRAGE VALID?

A. No. As discussed in the CoreCom ruling, the FCC found that its prior concerns about arbitrage no longer exist because the use of dial-up Internet services is declining as the availability of broadband services increase.

Q. HAVE OTHER STATE COMMISSIONS AGREED WITH MCI’S CONCLUSION IN THIS REGARD?

A. Yes. Other state commissions have ruled in favor of CLECs as regards this issue. For example, in its Declaratory Order in *Declaratory Ruling Concerning the Usage of Local Interconnection Services for the Provision of Virtual NXX Service*, Docket 28906, the Alabama Public Service Commission determined that ISP-bound FX and VNXX calls are predominantly considered jurisdictionally interstate and subject to the authority of the FCC. The Alabama commission further concluded that carriers may continue to assign telephone numbers to end users physically located outside the rate center to which the numbers they are assigned are homed. The commission also noted that ILECs have traditionally

1 treated their FX and virtual NXX traffic as local in all respects, including with
2 regard to intercarrier compensation. In its Order on Reconsideration, in
3 *Consolidated Complaints and Requests for Post-Interconnection Dispute*
4 *Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against*
5 *Southwestern Bell Telephone Company*, Docket No. 24015 (2004), the Texas
6 Public Utility Commission upheld a finding that

7 the compensation mechanism in the *ISP Remand Order* shall apply to all
8 ISP-bound calls. The Arbitrators stated that "all ISP-bound traffic falls
9 under the compensation mechanism outlined in the *ISP Remand Order*.
10 Consequently, the Arbitrators found that all ISP-bound traffic, whether
11 provisioned via an FX/FX-type arrangement or not, is subject to the
12 compensation mechanism contained in the FCC's *ISP Remand Order*."
13 Consistent with this conclusion, the Commission withdraws its decision
14 applying access charges to traffic bound for ISPs outside the local calling
15 area. (p.3)
16

17 The Texas commission specifically referred compensation for non-ISP traffic to a
18 separate proceeding.

19 Accordingly, the Commission should approve MCI's proposed language.
20

21 **Q. HORRY CITES THE LOCAL COMPETITION ORDER, PARAGRAPH**
22 **1043, TO CONTEND THAT END USERS MUST BE PHYSICALLY**
23 **LOCATED IN A "LOCAL AREA" FOR THE CALL TO BE "LOCAL".**
24 **(P. 14) WHAT IS YOUR RESPONSE?**

25 **A.** This paragraph of the FCC's First Report and Order does not address ISP Bound
26 traffic and is not applicable to this issue.

1

2 **Q. HORRY'S RETURN IMPLIES THAT CONTRARY TO MCI'S**
3 **STATEMENT IN ITS PETITION, MCI IS NOT PREVENTED UNDER**
4 **THIS AGREEMENT FROM OFFERING LOCAL SERVICE. (P. 15)**
5 **WHAT IS YOUR RESPONSE?**

6 A. Horry' statement that "MCI is free to offer service in any LATA it wishes," is
7 misleading. Horry intends by their proposed agreement language to foreclose
8 MCI from offering local telecommunication services to Time Warner in every
9 LATA and every local calling area.

10

11 **Q. HORRY STATES THAT THEY LACK THE FLEXIBILITY TO**
12 **"CHOOSE CERTAIN TYPES OF CUSTOMERS," THUS IMPLYING**
13 **THAT THEY CANNOT SERVE ISPs, AND, THEREFORE, THAT THEY**
14 **CANNOT "GENERATE OUT-OF-BALANCE" TRAFFIC. (P. 17) WHAT**
15 **IS YOUR RESPONSE?**

16 A. Horry is free to offer ISPs FX numbers to provide service in their territories and
17 also offers broadband and Dial-Up services in competition with ISPs. Further, as
18 the FCC noted in the CoreCom order, these other broadband alternatives, are
19 lowering the usage of dial-up internet service providers. MCI is seeking this
20 agreement to continue serving these ISP dial-up entities that have contract with it
21 on-net, thus achieving greater efficiencies by having them located on-net near
22 MCI's local switches. These customers should have the ability to choose between

1 the services of Horry and MCI. Horry should not be permitted to exercise their
2 monopoly power and restrict competitive alternatives available to consumers.

3
4 **Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE #5?**

5 A. As stated above, the FCC's ISP Remand Order permits MCI to seek the same
6 reciprocal comp rate for ISP traffic and Local/EAS calling when traffic is out of
7 balance. As such, MCI's proposed ICA language should be adopted.

8
9 **Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE #10?**

10 A. As discussed with regard to Issue No. 4, the FCC has determined a rate applicable
11 to "out of balance" reciprocal compensation. The rate is \$0.0007. Accordingly,
12 the Commission should adopt that rate.

13
14 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

15 A. Yes.

GREGORY J. DARNELL
PROFESSIONAL EXPERIENCE

7/1/05 – Date EXECUTIVE STAFF MEMBER, MCI, REGULATORY ECONOMICS

Responsibilities: Define public policy and ensure effective advocacy.

4/20/04 – 6/ 30/05 SENIOR MANAGER, MCI, REGULAORY ECONOMICS

Responsibilities: Define public policy and ensure effective advocacy.

6/21/96 –4/20/04 REGIONAL SENIOR MANAGER, MCI WORLDCOM, INC., PUBLIC POLICY.

Responsibilities: Define public policy and ensure effective advocacy throughout BellSouth Region.

9/1/95 - 6/21/96 SENIOR STAFF SPECIALIST III, MCI, NATIONAL ACCESS POLICY.

Responsibilities: Define MCI's national access policies and educate field personnel. Present MCI's access policy positions to Executive Management and obtain concordance.

9/1/94 - 9/1/95 SENIOR STAFF SPECIALIST III, MCI, CARRIER RELATIONS.

Responsibilities: Manage MCI's business relationship with ALLTEL.

1/1/93 - 9/1/94 SENIOR STAFF SPECIALIST II, MCI, SOUTHERN CARRIER MANAGEMENT.

Responsibilities: Chief of Staff.

9/1/91 - 1/1/93 MANAGER, MCI, ECONOMIC ANALYSIS.

Responsibilities: Testify before state utility commissions on access issues. Write tariff and rulemaking pleadings before the FCC. Serve as MCI's expert on Local Exchange Carrier revenue requirements, demand forecasts and access rate structures.

1/1/90 - 9/1/91 SENIOR STAFF SPECIALIST I, MCI, FEDERAL REGULATORY.

Responsibilities: Direct FCC tariff and rulemaking analysis. Provide access cost input to MCI's Business Plan. Write and file petitions against annual tariff filings and requests for rulemaking. Train State Utility Commissions on the use and design of financial databases.

1/1/89 - 1/1/90 STAFF SPECIALIST III, MCI, FEDERAL REGULATORY.

Responsibilities: Track and monitor tariff transmittals for Ameritech, BellSouth, SWBT and U S West. Author petitions opposing RBOC tariff filings. Represent MCI at National Ordering and Billing Forum.

10/9/87 - 1/1/89 SUPERVISOR, MCI, TELCO COST ANALYSIS.

*Responsibilities: Supervise team of analysts in their review of interstate access tariff changes.
Coordinate updates to Special Access billing system.*

Exhibit GJD-1 (CONT)

1/1/86 - 10/9/87 FINANCIAL ANALYST III, MCI, TELCO COST.

Responsibilities: Analyze MCI's access costs and produce forecasts.

6/1/85 - 1/1/86 STAFF ADMINISTRATOR II, MCI, LITIGATION SUPPORT.

Responsibilities: Support MCI's antitrust counsel in taking depositions, preparing interrogatories and document requests.

1/1/84 - 6/1/85 PRODUCTION ANALYST, MCI, LITIGATION SUPPORT.

Responsibilities: Review and abstract MCI and AT&T documents obtained in MCI's antitrust litigation.

8/1/82 - 1/1/84 LEGAL ASSISTANT, GARDNER, CARTON AND DOUGLAS.

Responsibilities: Research and obtain information from the FCC, FERC and SEC.

EDUCATIONAL EXPERIENCE

9/1/00 - 12/15/04 UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE,
M.S. TELECOMMUNICATIONS MANAGEMENT

Studies: Network & Internet Engineering, MIS Integration, Management Accounting, International Public Policy, Strategic and Organizational Management of Technology, and IT Acquisition.

9/1/91 - 1/1/93 GEORGE WASHINGTON UNIVERSITY,
GRADUATE SCHOOL OF TELECOMMUNICATIONS.

Studies: Public Policy, Electrical Engineering and Economics.

9/1/78 - 6/1/82 UNIVERSITY OF MARYLAND, B.A.B.S.S., ECONOMICS.

Studies: Macro and Micro Economics, Statistics, Calculus, Astronomy and Music.

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission)
Services, LLC for Arbitration of Certain Terms) Docket No. 2005-188-C
and Conditions of Proposed Agreement with)
Horry Telephone Company, Concerning)
Interconnection and Resale under the)
Telecommunications Act of 1996)

CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for MCI, Inc., do hereby certify that I have served a copy of the Direct Testimony of Greg Darnell by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

F. David Butler, Esquire
The Public Service Commission
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Betty J. DeHart

SWORN to before me this

11th day of August, 2005.


(L.S.)

Notary Public for South Carolina

My Commission Expires: 7/25/15